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SARA FULLMANN
REGISTER OF DEEDS

DECLARATION OF COVENANTS, RESTRICTIONS, ASSESSMENTS,
AND EASEMENTS OF VILLAGE AT DEER CREEK

ITEM

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**DECLARATION OF COVENANTS, RESTRICTIONS ASSESSMENTS AND
EASEMENTS OF VILLAGE AT DEER CREEK**

This is the Declaration of Covenants, Restrictions, Assessments and Easements of Village at Deer Creek made as of the ___ day of _____, _____, pursuant to the provisions of K.S.A. §§58-3701 *et. seq.* (the "Townhome Act").

Recitals

A. Greater Midwest Builders, Ltd., d/b/a Greater Missouri Builders, a Missouri Corporation ("Declarant"), is the owner in fee simple of all of the real property hereinafter described as the "Townhome Property" and the improvements thereon and appurtenances thereto.

B. The Declarant desires to create of this property a site of individually owned townhome units, and commonly owned areas and facilities, and to these ends to submit this property to the provisions of the Townhome Act.

Definitions

The terms used in this document shall have these meanings, unless the context requires otherwise:

"Articles" and "Articles of Incorporation" mean the articles of incorporation, filed with the Secretary of State of Kansas, incorporating Village at Deer Creek Homeowners Association as a Kansas not for profit corporation, as amended from time to time.

"Association" and "Village at Deer Creek Homeowners Association" mean the entity created by the filing of the Articles and is also one and the same as the association required for the Townhome under the Townhome Act.

"Board" and "Board of Directors" mean those persons who, as a group, serve as the board of directors of the Association.

"Bylaws" means the bylaws of the Association, as amended from time to time.

"Common Areas" means all of the Townhome Property, except each portion described in this Declaration as constituting a Unit or Units, and is that portion of the Townhome Property constituting "common areas and facilities" of the Townhome under the Townhome Act and which are to be owned in fee simple by the Association, as further described in Article VI, Section 1.

"Completed Units" means a Unit where the residence is substantially completed and for which a temporary or permanent certificate of occupancy has been issued.

"Declarant" means Greater Midwest Builders, Ltd., d/b/a Greater Missouri Builders, a Missouri corporation, and its successors and assigns.

"Declaration" means this instrument, by which the Townhome Property is hereby submitted to the provisions of the Townhome Act and the Townhome Property is subjected to the covenants, restrictions, assessments and easements set forth herein.

"Limited Common Areas" means those Common Areas serving exclusively one Unit or more than one but less than all Units, the enjoyment, benefit or use of which are reserved to the lawful occupants of that Unit or Units in this Declaration or on the Plat, as further described in Article VI, Section 2.

"Occupant" means a person lawfully residing in a Unit, regardless of whether or not that person is a Unit owner.

"Person" means an individual, corporation, partnership, limited liability company, trust or other legal entity capable of holding title to real property.

"Plats" means the plats of survey or replats of various parts of the Townhome Property filed from time to time with the Register of Deeds of Johnson County, Kansas, as required or permitted by the Townhome Act.

"Townhome Act" means K.S.A. §§58-3701. *et. seq.*, which is commonly known as the Kansas Townhouse Ownership Act.

"Townhome Property" means the tract of land hereinafter described as being submitted to the Townhome Act, all buildings, structures and improvement situated thereon, and all easements, rights and appurtenances belonging thereto. The Townhome Property is legally described in Exhibit A attached hereto.

"Turnover Date" means the earlier of (i) the date as of which 100% of all of the Units (as then composed or contemplated by the Declarant) have been sold and a deed thereto delivered by the Declarant, or (ii) the date the Declarant, in its absolute discretion, selects as the Turnover Date for this Declaration.

"Unit" and "Units" mean the portion or portions of the Townhome Property described as a unit or building lot in this Declaration and the Plats, and is that portion of the Townhome constituting a "townhouse unit" or "units" of the Townhome under the provisions of the Townhome Act.

"Unit owner" and "Unit Owners" mean that person or those persons owning the real estate in fee simple on which a Unit is located.

THE PLAN

NOW, THEREFORE, Declarant hereby subjects all of the Townhome Property to the covenants, restrictions, assessments and easements hereinafter set forth and hereby submits the Townhome Property to the provisions of the Townhome Act and makes and establishes the following plan for the Townhome Property.

ARTICLE I

THE LAND

The legal description of the land constituting the initial Townhome Property, located in the City of Overland Park, Johnson County, Kansas, and consisting of 137 townhouse units, more or less, is attached hereto Exhibit A.

ARTICLE II

NAME

The name by which the Townhome shall be known is "Village at Deer Creek".

ARTICLE III

PURPOSES: RESTRICTIONS

Section 1. Purposes. This Declaration is being made to establish separate individual parcels from the Townhome Property to which fee simple interests may be conveyed to create restrictions, covenants and easements providing for, promoting and preserving the values of Units and the Common Areas and the well being of Unit owners and occupants; and to establish a "Unit owners" association to administer the Townhome and the Townhome Property, to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth, and to raise funds through assessments to accomplish these purposes.

Section 2. Restrictions. The Townhome and the Townhome Property shall be benefitted by and subject to the following restrictions:

(a) Unit Uses. Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto; provided, however, that no Unit may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. Notwithstanding the foregoing: (i) an occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit), making professional telephone calls or corresponding, in or from a Unit, is

engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions; (ii) it shall be the right of Declarant to maintain, during the period of its sale or rental of Units, but for no longer than a ten year period of time from the time of the closing of the first sale of a Unit to a bona fide purchaser, (A) one or more Units as sales and rental models and offices, and for storage and maintenance purposes, and (B) such other portions of the Townhome Property as Declarant may deem necessary, including without limitation of the community building and the maintenance of a construction trailer, as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction or sale of Unit(s) or the Townhome property, which right may not be limited or revoked without the specific consent of Declarant, provided, that Declarant may maintain and utilize one or more of the Units in property added to the Townhome for such purposes for a ten year period of time from the time of the closing of the first sale of a Unit in the property so added; and (iii) one or more Units may be maintained for the use of the Association in fulfilling its responsibilities.

(b) Common Areas Uses. The Common Areas (except the Limited Common Areas) shall be used in common by all Unit owners and occupants and their agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of Units. Unless expressly provided otherwise herein, no Common Areas shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Unit owners and occupants.

(c) Limited Common Area Uses. Those portions of the Common Areas described in this Declaration or shown on the Plats as Limited Common Areas shall be used and possessed exclusively by the Unit owners and occupants of the Unit or Units served by the same, as specified in this Declaration or shown on the Plat, and shall be used only for the purposes intended.

(d) Visible Areas. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except interior inoffensive drapes, curtains, or louvered blinds which, from exterior observation, must be white, beige or gray, or as otherwise authorized by the Board) or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof. No awning, canopy, shutter or television or citizens' band or other radio antenna or transmitter, satellite dish, or any other device or ornament, shall be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio, porch or balcony, visible to the exterior, unless authorized by the Board. Until the closing has occurred on the last of the Units to be sold by Declarant, windows may not be installed in any screened veranda or porch that is a part of a Unit, unless installed by Declarant.

(e) Offensive Activities. No noxious or offensive activity shall be carried on in any Unit, or upon the Common Areas or Limited Common Areas, nor shall any be used in any way or for any purpose which may endanger the health of or unreasonably disturb any occupant.

(f) Vehicles. The Board may promulgate rules and regulations restricting or prohibiting the parking of automobiles, vans, buses, inoperable vehicles, trucks, trailers, boats and recreational vehicles on the Common Areas, or parts thereof, and may enforce such regulations or restrictions by levying enforcement charges, having such vehicles towed away, or taking such other lawful actions as it, in its sole discretion, deems appropriate.

(g) Renting and Leasing. No Unit or part thereof shall be rented or used for transient or hotel purposes, which is defined as: (i) rental of less than one month duration or under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only. No lease may be of less than an entire Unit and no lease terms shall be more than eighteen (18) months. Any lease agreement shall be in writing, shall provide that the lease shall be subject in all respects to the provisions hereof, and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of the Townhome Instruments shall be a default under the lease. Prior to the commencement of the term of a lease, the Unit owner shall notify the Board, in writing, the name or names of the tenant or tenants and the time during which the lease term shall be in effect.

(h) Signs. No sign of any kind shall be displayed to the public view on the Townhome Property except: (a) on the Common Areas, signs regarding and regulating the use of the Common Areas, provided they are approved by the Board; (b) on the interior side of the window of a Unit, one professionally prepared sign not in excess of four square feet in size, advertising the Unit for sale or rent; and (c) on the Common Areas and model Units, signs advertising the sale and/or rental of Units by the Declarant during the period of its initial sale and rental of Units, provided, if these limitations on use of signs, or any part thereof, are determined to be unlawful, only the signs described in subitem (a) above, shall be permitted after Declarant's period of initial sales and rental of Units.

(i) Replacements. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable structure type, size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.

(j) Structural Integrity. Nothing shall be done in any Unit, or in, on or to the Common Areas or Limited Common Areas, which may impair the structural integrity of any improvement.

(k) Construction in Easements. No structure excluding fences and sidewalks or other material shall be placed or permitted to remain within the easements for the installation and maintenance of utilities, including the gas pipeline easements, and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in the easements or which may obstruct

or retard the flow of water through drainage channels in the easement areas. No improvements of any kind shall be placed or permitted to remain within the gas pipeline easements along the western edge of the Townhome Property. The utility facilities within the easement areas, and the lawn and landscaping within the gas pipeline easement, shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

(l) Animals. Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Areas. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in any Unit, provided the two pets are either dogs or cats who have or will have a combined mature weight not in excess of one-hundred (100) pounds, the pets shall be house pets only; (ii) the maintaining of animals shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, the right to prohibit pets entirely, to place limitations on the size, number and type of such pets, and the right to levy enforcement charges against persons who do not clean up after their pets; and (iii) the right of an occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Townhome or other Units or occupants.

(m) Conveyances. Each Unit shall be conveyed or transferred (voluntarily or involuntarily) as a separately designed and legally described fee simple estate subject to the terms, conditions and provisions hereof. The rights in the Common Areas shall be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage, or other instrument of conveyance or encumbrance. In any instrument of conveyance or creating an encumbrance, or in any other document legally describing a Unit, it shall be sufficient to lawfully describe a Unit and its interest in the Common Area by referring to the Unit designation of the Unit on the relevant Plat and the appropriate recording references of the initial page of this Declaration. Failure to include a reference to this Declaration in any deed shall neither invalidate any such transfer nor relieve the Unit from being subject to this Declaration. The right of a Unit owner to sell, transfer or otherwise convey that owner's unit is not subject to any right of first refusal, and any Unit owner may transfer that Owner's Unit free of any such limitation. To enable the Association to maintain accurate records of the names and addresses of Unit owners, each Unit owner agrees to notify the Association, in writing, within five days after an interest in that Unit owner's Unit has been transferred to another person. In addition, each Unit owner agrees to provide to a purchaser of that owner's Unit a copy of all Townhome Instruments.

(n) Discrimination/Handicapped Accommodation. No action shall at any time be taken by the Association or its Board which in any manner would discriminate against any Unit owner in favor of another. In addition, notwithstanding any provision hereof, or any rule or regulation, the Board shall make reasonable accommodation if necessary to afford a handicapped person equal opportunity to use and enjoy the Townhome Property, provided,

that nothing contained herein shall be construed to mean that any such accommodation be at the cost of the Association.

(o) Architectural Control. No building, fence, wall, sign or other structure or improvement shall be commenced, erected or maintained upon the Townhome Property, or any part thereof, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board or its designed representative or representatives, in its or their sole and unfettered discretion; provided, however, that no such approval of the Board shall be required for the Declarant to construct the Units and Common Areas.

(p) Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically hereinbefore mentioned, the Board may, from time to time, adopt and enforce such further reasonable rules and regulations as it deems necessary or desirable to promote harmony, to serve the best interests of the Unit owners, as a whole, and the Association, and to protect and preserve the nature of the Townhome and the Townhome Property. A copy of all rules and regulations, and amendments thereof, shall be furnished by the Board to the owners of each Unit prior to the time when the same shall become effective.

ARTICLE IV

IMPROVEMENT DESCRIPTIONS

Section 1. Residential Buildings. There will be a total of one hundred thirty seven (137) Units. The residential buildings and Units are and will be located as shown on the Plats.

Section 2. Other. Each Unit will have a private exterior entrance and an exterior parking area in front of the garage which is part of that Unit. Some Units will have a porch that is part of the Unit, while others have an exterior patio or deck that is a Limited Common Area for that Unit. Declarant shall have the right but not the obligation to add and designate additional Common Areas from time to time in its discretion.

ARTICLE V

UNITS

Section 1. Unit Designations. Each of the dwelling units, each of which is called a "Unit", is or will be designated by a number shown on the record plat.

Section 2. Composition of Units.

(a) Unit Composition. Each Unit constitutes a single fee simple estate and consists of real estate within the boundaries designated for that Unit on the Plat, and all

improvement located thereon. Without limiting the generality of the foregoing, or, as appropriate, in addition, each Unit shall include:

(1) the portion of the building and improvements located within the boundaries of the Unit;

(2) all fixtures and appliances installed for the exclusive use of that Unit, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal units, refrigerators, stoves and hoods, television antennas and cables, furnaces, hot water heaters, heat pumps, air conditioning units (even though located outside the bounds of a Unit), and components of the foregoing, if any; and

(3) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, conduits and apparatus, wherever located, which serve only that Unit.

(b) Each Unit has its own furnace, air conditioning unit, hot water heater, and a fireplace. Each Unit has direct access to a parking area/private drive (which are Limited Common Areas) and a private street (which is a Common Area) leading to a public street.

Section 3. Party Walls. Each wall which is build as a part of the original construction of the Units upon the Townhome Property and placed on the dividing line between two or more Units shall constitute a party wall, and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence and willful acts or omissions shall apply thereto.

(a) The reasonable repair and maintenance of a party wall not covered by insurance shall be shared by the Unit Owners and Homes Association who make use of the wall in proportion to such use.

(b) Notwithstanding any other provision of this Declaration, any Unit owner who by his, her or its negligence or willful act causes the party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

(c) The right of any Unit owner to contribution from any other Unit owner with respect to the obligations relating to party walls shall be considered an appurtenant right and pass to any and all successors in interest to the title of such Unit.

(d) The boundary line between Units which share a party wall is and shall be deemed to be the center line of the wall regardless of the actual location of the platted boundary line.

ARTICLE VI

COMMON AREAS AND LIMITED COMMON AREAS

Section 1. Common Areas - Description. All of the Townhome Property, including all of the land and all improvements thereon and appurtenances thereto, except those portions labeled or described in this Declaration or on the Plats as a part of a Unit, are Common Areas.

Section 2. Limited Common Areas - Description. Those portions of the Common Areas if any that are labeled or designated "limited common areas" on the Plats or in this Declaration are Limited Common Areas. In the case of each Unit these Limited Common Areas consist of an exterior parking area in front of the garage serving that Unit, and, in the case of some Units, a contiguous patio, or deck, and other improvements within that patio. Each such Limited Common Area is reserved for the exclusive use of the owners and occupant of the Unit it is designed or designated to serve.

Section 3. Undivided Interest in Common Areas. The Common Areas shall be owned by the Association, but each Unit shall be deemed to have an undivided interest in the Common Areas and in the "common expenses" as equally allocated among all of the Units on the basis of each type of Unit.

ARTICLE VII

UNIT OWNERS' ASSOCIATION

Section 1. Establishment of Association. The Association has been formed to be and to serve as the Unit owners' association of the Townhome. The Declarant is presently the sole member of the Association.

Section 2. Membership and Voting Rights. Until the Turnover Date, the Association shall have two classes of membership, namely Class A and Class B. The Declarant shall be the sole Class A member. Each owner of a Unit, including the Declarant as an owner, shall be a Class B member. Until the Turnover Date, all voting rights shall be held by the Class A member, except that the Class B members shall have the sole right to vote on matters described in Articles X, Section 10, Article XII, Section 3(b)(1), and Article XV, Section 1 below.

After the Turnover Date, there shall be only one class of membership which shall consist of the owners of the Units and every such owner shall be a member. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit, and transfer of ownership of a Unit shall automatically transfer membership to the transferee.

When voting rights exist based on Unit ownership, each member shall have one vote for each Unit for which he is the owner, provided, however, that when more than one person is an owner of any particular Unit, all such persons shall be members and the one vote for such Unit shall be

exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Unit.

Subject to the foregoing, the Association shall be the sole judge of the qualifications of each Unit owner to vote and their rights to participate in its meetings and proceedings. Except as provided for herein, notice, quorum and voting requirements shall be established by the Bylaws established by the Declarant for the not-for-profit Homes Association.

The Board, from time to time, may suspend the right of a member to vote with respect to his, her, or its Unit for failure to pay assessments when due, or for failure to observe other of the terms of the Townhome Instruments pursuant to rules and regulations duly adopted by the Board from time to time.

Section 3. Board of Directors. The Board initially shall be the one person named as the initial Director pursuant to the provisions of the Articles, or such other person or persons as may from time to time be substituted by Declarant. As soon as possible after the Turnover Date, the Association shall hold a meeting of its members, and all Unit owners shall elect six directors to replace of all those Directors earlier elected or designated by Declarant, if any. The terms of the six Directors shall be staggered so that the terms of one-third of the Directors will expire and successors will be elected at each annual meeting of the Association. Thereafter, at such annual meetings, successors to the two Directors whose terms then expire shall be elected to serve three-year terms. Notwithstanding the foregoing, after the Turnover Date the members, by the vote of members exercising not less than a majority of the voting power of members, may, from time to time, change the number and terms of Directors, provided, that in any such event the terms of not less than one-third of the Directors shall expire annually.

Notwithstanding the foregoing, Declarant shall have the right at any time to waive its right to select one or more Directors or to vote in an election of Directors.

Section 4. Authority of Board. The Board shall have all authority to management, maintain, repair, replace, alter and improve the Common Areas and the exterior portions of the Units and assess and collect funds for the payment thereof, and to do all things, and exercise all rights provided by the Townhome instruments, or the Townhome Act, that are not specifically reserved to Unit Owners.

Section 5. Delegation of Authority; Management Contracts. The Board may delegate all or any portion of its authority to discharge its responsibilities to a managing agent, which may be the Declarant or an affiliate of the Declarant. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a common expense, provided, however, that any agreement for professional management shall be terminable by the Association for cause on thirty (30) days' written notice; shall be terminable by either party without cause and without penalty, on not more than ninety (90) days' written notice; shall not exceed one year unless renewed by agreement of the parties for successive one-year periods, and shall be bona fide and commercially reasonable at the time entered into under the circumstances then prevailing, provided

that, in the case of any professional management contract entered into before the Turnover Date, the contract must give the Association the right to terminate it without cause and without penalty at any time after the Turnover Date. Subject to the foregoing, nothing contained herein shall preclude Declarant, or an affiliate of Declarant, or any other entity designated by Declarant, from being employed as managing agent. The Association also shall have the authority to enter into contracts with Declarant or an affiliate of Declarant for goods, services, or for any other thing, including, without limiting the generality of the foregoing, contracts for the providing of maintenance and repair services, provided the same are bona fide and commercially reasonable to the Unit owners at the time entered into under the circumstances then prevailing. In any case, no agreement by the Association executed prior to the Turnover Date shall extend more than one year subsequent to the Turnover Date unless renewed by vote of Unit owners.

ARTICLE VIII

MAINTENANCE AND REPAIR

Section 1. Association Responsibility. To the extent and at such times as the Board, in its exercise of business judgment shall determine, the Association shall maintain, repair and replace all improvements constituting a part of the Common Areas (including the Limited Common Areas) trunk and branch utility lines, lawns, shrubs, trees, walkways, drives, parking areas, and the exterior portions of all Units (except as provided in Section 2 below). The Association shall maintain an adequate reserve fund for the periodic maintenance, repair and replacement of all such improvements, including but not limited to private streets and curbs and sewers. Declarant recommends that at least every five (5) years the Home Association retain an engineer to inspect the streets and sewers to assist the Homes Association in determining the adequacy of capital improvement reserves. Except to the extent, if any, that a loss is covered by insurance maintained by the Association, the Association shall not have responsibility to repair or maintain the interior of any Unit, or component thereof, or personal property within a Unit.

Section 2. Individual Responsibility. Each Unit owner shall repair and maintain the interior of the Unit, and all components thereof, owned by that Unit owner, and perform cleaning and housekeeping with respect to Limited Common Areas appurtenant to that owner's unit. Without limiting the generality of the foregoing, this repair and maintenance responsibility of a Unit owner shall include repair, maintenance and replacement of all appliances, all plumbing fixtures and electrical fixtures, and all windows, screens and doors, including the frames, sashes and jambs, and the hardware therefor. In the event a Unit owner shall fail to make a repair or perform maintenance required of that Unit owner, or in the event the need for maintenance or repair of any part of the Common Areas (including, without limitation, any trunk or branch utility lines) or Limited Common Areas is caused by the negligent or intentional act of any Unit owner or occupant, or is as a result of the failure of any Unit owner or his her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express or implied or imposed by law, the Association may perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the cost thereof shall constitute a special individual Unit assessment, as hereinafter defined, on the Unit owned by that Unit owner and on that Unit owner. The

determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

ARTICLE IX

UTILITY SERVICES

Each Unit owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to that Unit, and to reimburse the Association for that Owner's Unit's share of any utility cost that the Board reasonably determines is attributable to use by that owner's Unit. All other utility costs shall be common expenses and paid by the Association.

ARTICLE X

INSURANCE: LOSSES

Section 1. Fire and Extended Coverage Insurance. The Board shall obtain and maintain for all buildings, structures, fixtures and equipment (whether as a Common Area or Unit), and for the Association's personal property and supplies on the Townhome Property, at the Association's cost and as a common expense, blanket fire and extended coverage against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Townhome Property, or, if the policy does not include an "all risks" endorsement, a policy that includes the "broad form" covered causes of loss, in amounts at all times sufficient to prevent the Unit owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, and excavations). This insurance shall also:

- (a) provide coverage for the Units and built-in or installed improvements, fixtures and equipment that are part of a Unit;
- (b) be written in the name of the Association for the use and benefit of the Association and the Unit owners, and provide for the payment of losses thereunder by the insurer to the Association (or its nominee) as insurance trustee for the benefit of the Association, each Unit owner and the holder of each first mortgage of record on the Units, as their interests appear and as set forth in this Declaration;
- (c) contain or have attached the standard mortgagee clause commonly accepted by institutional first mortgage holders, insurers, and guarantors, which must provide that the carrier shall notify the named insured and each first mortgagee named in the mortgage clause at least ten days in advance of the effective date of any reduction in, cancellation of, or substantial change in the policy;

- (d) be paid for by the Association, as a common expense;
- (e) contain a waiver of subrogation of rights by the carrier as to the Association, its officers and directors and all Unit owners;
- (f) provide that the insurance shall not be prejudiced by any acts or omissions of individual Unit owners; and
- (g) be primary, even if a Unit owner has other insurance that covers the same loss.

The Unit owner shall be responsible for the deductible under the Association's insurance on any property damage or casualty loss to the Unit or Limited Common Areas assigned to such Unit. The amount of such deductible shall be uniform for all Units and shall be set by the Board from time to time in a reasonable amount.

Section 2. Liability Insurance. The Association shall obtain and maintain, at the Association's cost and as a common expense, a commercial policy of general liability insurance covering all of the Common Areas, public ways and any other areas under the Association's supervision, and Units, if any, owned by the Association, even if leased to others, insuring the Association, the directors, and the Unit owners and occupants, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (b) \$1,000,000.00, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of a Unit owner because of negligent acts of the Association, the Board, or other Unit owns, and shall include, without limitation, coverage for legal liability of the insured for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Each such policy must provide that it may not be canceled or substantially modified, by any party, without at least ten days' prior written notice to the Association.

Section 3. Fidelity Coverage. The Board may obtain and maintain, at the Association's cost and as a common expense, fidelity insurance providing coverage for the Association against dishonest acts on the part of directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association.

Section 4. Hazard Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Kansas which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports - International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBB" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poors

International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

Section 5. Other Association Insurance. In addition, the Board may purchase and maintain, at the Association's cost and as a common expense, contractual liability insurance, officers and directors liability insurance, and such other insurance as the Board may determine.

Section 6. Nominee; Power of Attorney. There may be named, under any policy obtained by the Association, a nominee as an insured on behalf of the Association, who shall have exclusive authority to negotiate losses under any such policy. Each Unit owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or its nominee, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including; the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or its nominee, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for the Association, the Unit owners and their first mortgage holders, as their interests may appear and as set forth in this Declaration. This power is for the benefit of each and every Unit owner, and their respective first mortgage holders, and the Association, and the Townhome, runs with the land, and is coupled with an interest.

Section 7. Unit Owners' Insurance. Any Unit owner or occupant may carry such insurance, in addition to that provided by the Association pursuant hereto, as that Unit owner or occupant may determine, subject to the provisions hereof, and provided that no Unit owner or occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the blanket insurance carrier pursuant hereto by the Association. In the event any Unit owner or occupant violates this provision, any diminution in surface proceeds resulting from the existence of such other insurance shall be chargeable to the Unit owner who acquired or whose occupant acquired such other insurance, who shall be liability to the Association to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, a Unit owner or occupant may obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and similar matters of the type and nature of coverage commonly referred to as "tenant improvement and betterments". All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and directors, and all other unit owners and occupants.

Section 8. Sufficient Insurance. In the event the improvement forming a part of the Townhome or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be used in payment therefor; provided, however, that in the event that within sixty (60) days after such damage or destruction Unit owners and their first mortgagees, if they are entitled to

do so pursuant to the provisions of this Declaration, shall elect not to make the repair, restoration or reconstruction, then such repair, restoration or reconstruction shall not be undertaken.

Section 9. Insufficient Insurance. In the event the improvements forming a part of the Townhome or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then unless the Unit owners and their first mortgagees if they are entitled to do so pursuant to the provisions of this Declaration, shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction, the Association shall make repairs, restoration or reconstruction of the improvements so damaged or destroyed at the expense (to the extent not covered by insurance) of all Unit owners in proportion to their respective undivided interest in the Common Areas. Should any Unit owner refuse or fail after reasonable notice to pay that Unit owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Unit of such Unit owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

Section 10. Election Not to Restore. The Association may, with the written consent of all Unit owners and their first mortgagees, both given within seventy-five (75) days after damage or destruction, determine not to repair, restore or reconstruct any damage or destruction. In the event of such an election not to repair or restore damage or destruction or reconstruct such Unit or Units, the net proceeds of insurance paid by reason of such damage or destruction shall be distributed among the owners of the damaged Units, and the holders of their respective mortgage liens (as their interests may appear) in the proportions of their interests in the Units.

ARTICLE XI

GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

Section 1. Easements of Enjoyment, Limitations. Every Unit owner shall have a right and easement of enjoyment in, over and upon the Common Areas and an unrestricted right of access to and from his, or its Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Areas and the Limited Common Areas, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof, or to that Unit's parking facilities. Each Unit owner shall be deemed to have delegated that Unit owner's right of enjoyment to the Common Areas and to ingress and egress to the occupants of that owner's Unit.

Section 2. Right of Entry for Repair, Maintenance and Restoration. The Association shall have a right of entry and access to, over, under, upon and through all of the Townhome Property, including each Unit, the Common Areas and the Limited Common Areas, to enable the Association to Perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any and all utilities, improvements, and other times, things or areas of or in the Townhome Property. In the event of an emergency, the Association's right of entry

to a Unit and its appurtenant Limited Common Areas may be exercised without notice; otherwise, the Association shall give the owners or occupants of a Unit no less than twenty-four hours advance notice prior to entering a Unit or its appurtenant Limited Common Areas.

Section 3. Easements for Encroachments. Each Unit and the Common Areas and Limited Common Areas shall be subject to and benefitted by easements for encroachments on or by any other Unit and upon the Common Areas and Limited Common Areas created or arising by reason of overheads; or by reason of deviations in construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements; or by reason of errors on the Plats. Valid easements for these encroachments and for the maintenance of same, as long as the physical boundaries of the Units after the construction, reconstruction, repairs, etc. will be in substantial accord with the description of those boundaries that appears herein or on the Plats, shall and do exist so long as the encroachments remain.

Section 4. Easement for Support. Every portion of a building or utility line or any improvement on any portion of the Townhome Property contributing to the support of another building, utility line or improvement on another portion of the Townhome Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements and other portions of the Townhome Property.

Section 5. Easements for Proper Operations. Easements in favor of the Association and the Declarant shall exist upon, over and under all of the Townhome Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of, all utilities, including, but not limited to water, sewer, gas, telephone, electricity, security systems, master telephone antennas and cable television, and the road system and all walkways, and for all other purposes necessary for the proper operation of the townhome Property. By these easements it shall be expressly permissible for the Declarant and/or the Association to grant to the appropriate public authorities and/or the providing companies and contractors permission to construct and maintain the necessary appurtenances and improvements on, above, across and under the Townhome Property. Should any public authority or other company furnishing a service request a specific easement, permit, or license, the Board shall have the right to grant such easement, permit or license without conflicting with the terms hereof. In addition, in the event the Board determines that the grant of easement rights to others is in the best interests of the Association, the Association shall have the right to grant the same, provided that use of the same would not, in the sole judgment of the Board, unreasonably interfere with the use and enjoyment of the Townhome Property by owners and occupants.

Section 6. Easement for Services. Non-exclusive easements are hereby granted to all police, firemen, ambulance, operators, mailmen, delivery men, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Areas in the performance of their duties, subject to such reasonable rules and regulations as the Board may establish, from time to time.

Section 7. Easements Reserved to Declarant. Non-exclusive easements are hereby reserved to Declarant, its successors, and assigns, over, under and upon each Unit and the Common Areas and Limited Common Areas (a) for a five year period of time from the date of the closing by

Declarant of the first sale of a Unit to a bona fide purchaser, for access to and for the purpose of completing improvements for which provision is made in this Declaration, provided that such right of access shall be to the extent, but only to the extent, that access thereto is not otherwise reasonably available, (b) for the periods provided for warranties for purposes of making repairs required pursuant to those warranties or pursuant to contracts of sale made by Declarant with Unit purchasers, and (c) for the initial sales and rental period, but for no longer than ten years from the time of the closing of the first sale of a Unit to a bona fide purchaser, to maintain and utilize one or more Units and appurtenances thereto, for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes and advertising signs.

All rights and easement reserved to Declarant, its successors and assigns, pursuant to this section, shall be exercise and utilized, as the case may be, in a reasonable manner, and in such way as not to unreasonably interfere with the operation of the Association and the rights of owners and occupants of Units.

Section 8. Power of Attorney. Each Unit owner other than Declarant, by acceptance of a deed to a Unit, appoints the Association or its designated representative, as his, her or its attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Unit owner, such deeds of easement, licenses, permits, and other instruments as may be necessary or desirable, in the sole discretion of the Board, or its authorized representative, to further establish or effectuate the foregoing easements and rights. This power is for the benefit of each and every Unit owner, the Association, and the real estate to which it is applicable, runs with the land, as coupled with an interest, and is irrevocable.

Section 9. General. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

ARTICLE XII

ASSESSMENTS AND ASSESSMENT LIENS; RESERVE FUNDS

Section 1. Types of Assessments. Each Unit owner shall be obligated, and by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association; (a) annual operating assessments to pay common expenses, (b) special assessments to pay common expenses and for capital improvements, and (c) special individual Unit assessments, all of such assessments to be established and collected as hereinafter provided.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote and provide for the health, safety and welfare of Unit owners and occupants and the best interests of the Townhome Property.

Section 3. Elements- Apportionments; Due Dates.

(a) Annual Operating Assessments.

(1) The Declarant shall pay the following amounts toward the "common expenses" of the Association:

a. All common expenses allocable to the period prior to the closing of the first sale by Declarant of a Completed Unit.

b. Until the Turnover Date, Declarant shall have the right (but not the obligation) to make non-interest bearing loans to the Association to provide the Association with adequate funds (in addition to assessments received from Completed Units) to pay common expenses. Any such loans shall be repaid to the Declarant by the Association prior to the Turnover Date.

(2) Annual operating assessments to pay common expenses shall be assessed against Completed Units owned by parties other than the Declarant and Completed Units rented by the Declarant to third parties. The first annual assessment for each Completed Unit shall be prorated based upon when it became a Completed Unit during the year, except that the Declarant may charge buyers and pay over to the Association an operating reserve payable upon closing of the purchase of each Completed Unit.

(3) Annually, in advance where practical, the Board shall estimate, and prorate among all Completed Units and their owners on the basis of the undivided interest of each Completed Unit in the Common Areas (as described in Article VI, Section 3), "common expenses" of the Association, consisting of the following:

a. the estimated fiscal year's cost of the maintenance, repair, and other services to be provided or paid for by the Association;

b. the estimated fiscal year's costs for insurance premiums to be provided and paid for by the Association (except that the costs for the casualty insurance on Completed Units allocable to each Completed Unit shall be an expense solely of such Completed Unit);

c. the estimated fiscal year's costs for utility services not separately metered or charged to Unit owners;

d. the estimated amount required to be collected to maintain a working capital reserve fund, to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;

e. an amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacements of capital improvements and for the repair and replacement of major improvements including but not limited to private streets and sewers and for which cash reserves over a period of time in excess of one year ought to be maintained.

The streets and sewers shall have at least \$4 per month for long term maintenance and replacement.

f. the estimated fiscal year's costs for the operation, management and administration of the Association, including but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded; and

g. the estimated fiscal year's cost for all taxes and assessment which are not assessed directly to each Member's Unit.

(4) The Board shall thereupon allocate to each Completed Unit that Unit's share of all of these items, prorated in accordance with each respective Unit's undivided interest in the Common Areas (except for casualty insurance, which shall be allocated directly to the insured Completed Unit) and thereby establish the annual operating assessment for each separate Unit. For administrative convenience, any such assessment may be rounded so that monthly installments will be in whole dollars.

(5) The annual operating assessment shall be payable in advance, in equal monthly installments, provided that nothing contained herein shall prohibit any Unit owner from prepaying assessments in annual, semiannual, or quarterly increments. The due dates of any such installments shall be established by the Board or, if it fails to do so, an equal monthly pro rata share of the annual operating assessment for a Unit shall be due the first day of each month.

(6) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board as a special assessment among the Completed Units in proportion to their respective undivided interests in the common areas, and shall become due and payable on such date or dates as the Board determines.

(7) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, or as reductions in future assessments, as determined by the Board, in its sole discretion, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Unit owners.

(b) Special Assessments for Capital Improvements.

(1) In addition to the annual operating assessments and any special operating assessments, the Board may levy, at any time, special assessments to construct, reconstruct or replace capital improvements to the extent that reserves therefor and any applicable insurance proceeds with respect thereto are insufficient, provided that new capital improvements not replacing existing improvements (except new capital improvements required to comply with applicable law or governmental regulation, or to correct any deficiency or defect creating a safety or health hazard to occupants) shall not be constructed nor funds assessed therefor, if the cost thereof in any fiscal year would exceed an amount equal to ten percent (10%) or more of that fiscal year's budget, without the prior consent of Unit owners owning at least 75% of the then existing Units.

(2) Any such assessment shall be prorated among all Completed Units in proportion to their respective undivided interests in the Common Areas, and shall become due and payable on such date or dates as the Board determines.

(c) Special Individual Unit Assessments. The Board shall levy assessments against an Individual Unit, or Units, and the owner or owners thereof, to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of making repairs the responsibility of a Unit owner, and a Unit owner's interest, late charge, enforcement, and arbitration charges). Any such assessment shall become due and payable on such date as the Board determines. Additionally, during the first years of the Townhome's existence, and until such time as real estate taxes and assessments are split into separate tax bills for each Unit, the Association shall have the right to pay the real estate taxes and assessments as a special-individual Unit assessment. The share of those taxes and assessments for all of the Townhome Property by the undivided interest in the Common Areas attributable to each Unit. The calculation by the Association of the Units' shares of taxes and assessments shall be binding upon all Unit owners.

Section 4. Effective Date of Assessment. Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is set by the Board to the Unit owner subject thereto at least ten (10) days prior to the due date thereof, or if to be paid in installments, the due date of the first installment thereof. Written notice mailed or delivered to a Unit owner's Unit shall constitute notice to that Unit owner, unless the Unit owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit owner.

Section 5. Effect of Nonpayment of Assessment; Remedies of the Association.

(a) If any installment of an assessment is not paid within at least ten (10) days after the same is due, the entire unpaid balance of the assessment shall immediately become

due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.

(b) If any installment of an assessment is not paid within at least ten (10) days after the same is due, the Board at its option, and without demand or notice, may (i) charge interest on the entire unpaid balance (including the accelerated portion thereof) at such rate as the Board, from time to time, establishes by rule (or if the Board fails to establish a rate by rule, at the rate of eight percent (8%) per annum), (ii) charge a reasonable, uniform, late fee, as established from time to time by the Board, by rule, and (iii) charge the cost of collection, including attorney fees and other out-of-pocket expenses.

(c) All assessments, together with interest, late fees, and costs, including attorney's fees, shall be a charge in favor of the Association upon the Unit against which each such assessment is made.

(d) At any time after any assessment or an installment of an assessment levied pursuant hereto remains unpaid for thirty (30) days or more after the same has become due and payable, a certificate of lien for the unpaid balance of that assessment, including all future installments thereof, interest, late fees, and costs, including attorney fees, may be filed with the Register of Deeds of Johnson County, Kansas, pursuant to authorization given by the Board. The certificate shall contain a description or other sufficient legal identification of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments and charges, and shall be signed by the president or treasurer of the Association.

(e) The lien provided for herein shall become effective from the time a certificate of lien or renewal certificate was duly filed therefor, and shall continue for a period of five (5) years unless sooner released or satisfied in the same manner provided by law in the State of Kansas for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.

(f) Any Unit owner who believes that an assessment chargeable to his, her or its Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the District Court of Johnson County, Kansas for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Unit, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.

(g) Each such assessment together with interest, late fees, and costs, including attorney fees, shall be the joint and several personal obligation of the Unit owners who owned the Unit at the time when the assessment fell due and all subsequent Unit owners.

(h) The Association, as authorized by the Board, may file a lien or liens to secure payment of delinquent assessments, interest, late fees, and costs, including attorney's fees,

bring or join in an action at law against the Unit owner or owners personally obligated to pay the same, and an action to foreclose a lien, or any one or more of these. In any foreclosure action, the owner or owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action. The Association in any foreclosure action involving a Unit or Units shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest and costs of such action (including attorneys' fees) shall be added to the amount of any such assessment, to the extent permitted by Kansas law.

(i) No claim of the Association for assessments and charges shall be subject to setoffs, off sets, or counterclaims.

(j) No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common Areas, or any thereof, or by abandonment of his, her or its Unit.

(k) Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Units and their interests in the Townhome Property, and to continue to provide utility and other service, and, accordingly, assessment accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

Section 6. Subordination of the Lien to First Mortgages. To the extent provided in the Townhome Act, the lien of the assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of assessments and charges against the mortgaged Unit which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor owner. The foregoing will not relieve any successor owner from the obligation for assessments accruing thereafter.

Section 7. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Unit have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

ARTICLE XIII

CONDEMNATION

Each Unit owner, by accepting title to a Unit, grants to the persons who shall from time to time constitute the Board of the Association an irrevocable power of attorney, coupled with an interest, to conduct negotiations with the State, a political subdivision thereof or any other

corporation, agency or authority having the power of eminent domain that seeks to acquire any of the Townhome Property. In such event, the Association shall act as the representative of the Unit owners, and the Board may cause the Association to execute and deliver the appropriate conveyance on behalf of all owners in return for the agreed consideration. The Board shall allocate such consideration, to the extent possible, to the repair, replacement or restoration of the condemned Common Areas and then to the Unit owners and their respective mortgagees, as their interest may appear, in proportion to their respective undivided interests in the Common Areas. In the event negotiations shall fail, the condemning authority may join the Association as a party defendant in lieu of naming all Unit owners and such proceedings shall bind all Unit owners; however, any owner having an interest in the Common Areas may be made a party defendant in such proceedings. Subject to the foregoing provisions, in the event that any Unit is taken by condemnation or the exercise of the power of eminent domain, each owner and the holder of mortgages on the Unit shall be entitled to seek and have their just damages for the taking of the Unit, as allowed by law, including severance damage, if any. No provision herein shall be deemed to give any Unit owner or any other party priority over the rights of the holder of any first mortgage on any Unit in the case of a distribution of condemnation awards for losses to or a taking of the mortgaged Unit.

ARTICLE XIV

TOWNHOME INSTRUMENT REQUIREMENTS

Section 1. Association Control. Except in its capacity as a Unit owner of unsold Units, the Declarant or its agent will not retain a property interest in any of the Common Areas after the Turnover Date, except as expressly provided or contemplated herein. The owners of Units that have been sold by the Declarant or its agent will assume control of the Association and the Common Areas, as elsewhere provided herein.

Section 2. Declarant's Obligations. Declarant, in its capacity as owner of Units not yet sold, will be vested with the rights and be subject to the duties of a Unit owner set forth herein, or in any other Townhome Instrument, or established by law.

Section 3. Unit Owners' Rights and Obligations. Each Unit owner will be vested with the rights and be subject to the duties of a Unit owner set forth herein, or in any other Townhome Instrument, or established by law, during the time of that owner's ownership of a fee simple interest in a Unit.

ARTICLE XV

AMENDMENTS

Section 1. Power to Amend. Except as otherwise specifically provided herein, additional to, changes in, or amendment of this Declaration shall require the consent of Unit owners owning at least seventy-five percent (75%) of the Units and, until the sale by Declarant of the last contemplated Unit, the Declarant. Notwithstanding the foregoing:

(a) the consent of Unit owners at least eighty percent (80%) of the Units shall be required to terminate the Townhome and this Declaration; and

(b) in any event, Declarant reserves the right and power to amend the Townhome Instruments, to the extent necessary to (i) cause the Townhome Instruments to comply with the Act or conform to the requirements then governing the making of a mortgage loan or the purchase, guaranty, or insurance of mortgages by an institutional lender or an institutional guarantor or insurer of a mortgage on a Unit (or (ii) correct typographical errors or obvious factual errors or omissions the correction of which would not impair the interest of any Unit owner, mortgagee, insurer, or guarantor. No such amendment by the Declarant shall require the consent of any Unit Owner.

Section 2. Method to Amend. An amendment to this Declaration, adopted with the consents of Unit owners, shall be executed with the same formalities as to execution as this Declaration by two officers of the Association and shall contain their certification that such amendment was duly adopted in accordance with the foregoing provisions. Any amendment adopted by the Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to the Declaration shall be duly executed by it with the same formalities as to execution as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in Declarant or any duly empowered successor Declarant by this Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Register of Deeds of Johnson County, Kansas.

Section 3. Form of Consent of Owners. The consent of owners of Units to any amendment of this Declaration may be obtained in the form of written consent(s) executed by seventy-five percent (75%) of all of the Unit owners or in the form of a formal resolution approved by seventy-five percent (75%) of all of the Unit owners at a meeting of the members.

ARTICLE XVII

GENERAL PROVISIONS

Section 1 Covenants Running With the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Townhome Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.

Section 2. Enforcement. In addition to other remedies provided in this Declaration, Declarant (only with respect to those rights directly benefitting the Declarant), the Association, and each Unit owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Unit owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent

violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Unit owner shall have rights to action against each other for failure to comply with the provisions of the Townhome Instruments and applicable law, and with respect to decisions made pursuant to authority granted thereunder, provided, the Association shall have the right to assess reasonable charges against a Unit owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration, and provided, further, that neither the Association nor its directors, officers, or other representatives, shall be liable to any Unit owner or occupant, or their invitees, for damage to any Unit or any part thereof, or any personal property of such Unit owner, occupant or invitee, or for injury to such person, unless the damage or injury was proximately caused by the gross negligence or the intentional tortious act of the Association or such director, officer or other representative. Notwithstanding the foregoing, in the event of any dispute between the Association and any Unit owner or occupant that cannot be settled by agreement between them, no Unit owner or Unit Owners shall institute legal proceedings against the arbitrator selected by the Board. In addition to all other remedies available by law, the Association may use summary abatement or similar means to enforce any provisions hereof or restrictions against the Unit or its use, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished by summary means.

Section 3. Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easement by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with mandatory provisions of the Townhome Act, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided, that such invalidity shall in no wise affect any other provisions of this Declaration, which provisions shall remain in full force and effect. This Declaration shall be and remain in full force and effect even if the Townhome Property (or any part thereof) has not been properly submitted to the provisions of the Townhome Act or the formalities of the Townhome Act have not been completely followed.

Section 4. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, men or women, shall in all cases be assumed as though in such case fully expressed.

Section 5. Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the date first above written.

GREATER MIDWEST BUILDERS, LTD.,
d/b/a GREATER MISSOURI BUILDERS

By: *Daniel J. Barnard*
Daniel J. Barnard, Vice President

STATE OF MISSOURI)
) ss:
COUNTY OF ST. CHARLES)

BE IT REMEMBERED, that on this 3rd day of November, 1999, before me, the undersigned, a Notary Public of said State duly commissioned and sworn, personally appeared Daniel J. Barnard, known to me to be the Vice President of GREATER MIDWEST BUILDERS, LTD., d/b/a GREATER MISSOURI BUILDERS, personally known to me to be such Vice President, and who is personally known to be the same person who executed the within instrument on behalf of said corporation by authority of its Board of Directors and such person duly acknowledged the execution of the same to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Beverly J. Robinson
Notary Public in and for said
County and State

My Commission Expires:
7/27/03

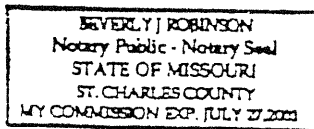


EXHIBIT "A"

PART OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 29, TOWNSHIP 13 SOUTH, RANGE 25 EAST IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 29; THENCE NORTH $02^{\circ}06'38''$ WEST ON THE WEST LINE THEREOF A DISTANCE OF 1050.04 FEET TO A POINT; THENCE NORTH $88^{\circ}07'13''$ EAST ON THE CENTERLINE OF 133RD STREET AS IT NOW EXISTS A DISTANCE OF 347.02 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ON SAID CENTERLINE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF $16^{\circ}14'23''$ AND A LENGTH OF 70.86 FEET TO A POINT; THENCE SOUTH $75^{\circ}37'51''$ EAST ON SAID CENTERLINE A DISTANCE OF 357.78 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ON SAID CENTERLINE ON A CURVE TO THE LEFT HAVING A RADIUS OF 1000.00 FEET, A CENTRAL ANGLE OF $16^{\circ}14'56''$ AND A LENGTH OF 283.60 FEET TO A POINT; THENCE NORTH $88^{\circ}07'13''$ EAST ON SAID CENTERLINE A DISTANCE OF 661.09 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ON SAID CENTERLINE IN A CURVE TO THE LEFT HAVING A RADIUS OF 1000.00 FEET, A CENTRAL ANGLE OF $10^{\circ}59'03''$ AND A LENGTH OF 191.71 FEET TO A POINT; THENCE NORTH $77^{\circ}08'10''$ EAST ON SAID CENTER LINE A DISTANCE OF 502.47 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ON SAID CENTERLINE IN A CURVE TO RIGHT HAVING A RADIUS OF 870.00 FEET A CENTRAL ANGLE OF $10^{\circ}59'03''$ AND A LENGTH OF 166.79 FEET TO A POINT; THENCE NORTH $88^{\circ}07'13''$ EAST A DISTANCE OF 96.35 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 29; THENCE SOUTH $02^{\circ}12'40''$ EAST ON THE SAID EAST LINE A DISTANCE OF 1030.01 FEET TO THE SOUTHEAST CORNER OF SAID SOUTHWEST ONE-QUARTER; THENCE SOUTH $88^{\circ}07'13''$ WEST ON THE SOUTH LINE OF SAID SOUTHWEST ONE-QUARTER A DISTANCE OF 2648.97 FEET TO THE POINT OF BEGINNING, EXCEPT ANY PART IN STREETS OR ROADS, AND EXCEPT THAT PART PLATTED AS DEER CREEK MARKET PLACE.

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